BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.07.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.16270 of 2018
and
W.M.P.(MD)No.14481 of 2018

Tvl.The Kerala Cardamom Processing and Marketing Ltd.,
Rep. by its Joint Managing Director,
K.Zia ud din Ahamed,
No.141, 11th Street, Subburaj Nagar,
Bodinayakkanur. : Petitioner

Vs.

The Assistant Commissioner (CT),
Bodinayakkanur Assessment Circle,
Bodinayakkanur. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records on the file of the respondent in TIN:33205080502/2014-15, dated 01.06.2018 and quash the same as illegal, invalid and against the principles of natural justice.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.A.Muthukaruppan,
Additional Government Pleader

ORDER

The petitioner is a dealer in Cardamom having the Head Office at Thekkady and branch at Bodinayakkanur. The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. On an inspection conducted by the Enforcement Wing officials on 24.12.2014 at the Branch Office, certain defects and omissions were found and a report was sent to the Assessing Authority. The respondent issued a notice on the basis of the report submitted by the Enforcement Wing officials, on 29.10.2015 calling for objections. The petitioner has also filed his objections elaborately on 18.11.2015. Thereafter, on 01.06.2018, the respondent passed the final order, which is under challenge before this Court.

2. The learned counsel for the petitioner would contend that the impugned order reads that the defects were admitted by the authorised signatory and, therefore, the contentions raised by the petitioner considered to be false and overruled. The impugned

order does not give any reason for rejecting the objections raised by the petitioner. On the other hand, it is passed without considering the objections. Therefore, the order passed is a non-speaking order and made without affording an opportunity of personal hearing.

3. Controverting the contentions raised by the petitioner, the learned Additional Government Pleader appearing for the respondent would submit that the order was passed after a period of two and half years from the date of issuance of notice. The petitioner did not ask for any personal hearing in the meanwhile. Now, they cannot raise the issue of personal hearing at this distance of time. Therefore, the impugned order does not require any interference.

4. I have considered the rival contentions.

5. Admittedly, the revision notice was issued on the basis of the inspection report submitted by the Enforcement Wing of the Department. The petitioner has also filed his objections in time. Once objections were filed, as per the settled procedure and instructions issued by the Department, the Assessing Authority shall fix a date for personal hearing and afford an opportunity to the dealer. But, in the instant case, such a personal hearing was not afforded to him.

6. Be that as it may, a reading of the impugned order states that the authorised signatory Mr.Renganath has admitted the discrepancies in third page of the written statement signed by him. So the dealer's contentions are just a false one and afterthought and thus, overruled. Other than this, no other discussions on the basis of the objections filed by the petitioner have been made. It is well known that when an inspection is conducted by the Enforcement officials, the statement is recorded by them and signature is obtained from the dealer, it is not a voluntary statement, but, it is obtained by the Enforcement Wing officials. Even assuming that it is a voluntary statement, it does not reveal that the said authorised signatory has admitted the defects. It is also stated that he can reply with respect to discrepancies only after verifying the documents available at the Head Office. Therefore, it cannot be considered as an admission to the discrepancies. When a dealer submits an elaborate reply, it cannot be overruled in single stroke. The Assessing Authority shall discuss the objections raised by them and give reasons for overruling the same. Therefore, the order passed by the respondent, as contended by the learned counsel for the petitioner, is a non-speaking order. The delay in passing the order, that too, without affording an opportunity of personal hearing to the petitioner also vitiates the same. In such circumstances, I am of the considered opinion that the impugned order is not sustainable in law and violative of principles of

natural justice and is liable to be set aside.

7. In fine, the Writ Petition is allowed and the impugned order dated 01.06.2018 of the respondent is set aside and the matter is remitted back to the respondent for fresh consideration. The respondent is directed to apply his mind with respect to the procedure adopted by the Enforcement Wing and independently formulate the proposals uninfluenced by the report submitted by the Enforcement Wing officials and call for objections and on receipt of objections, consider the same on merits and thereafter, pass final orders, after affording an opportunity of personal hearing to the petitioner, within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Bodinayakkanur Assessment Circle,
Bodinayakkanur.

+1cc to Mr.A.Chandrasekaran, Advocate SR.No.74853
Sml
MK/MMS/SAR 4/02.08.2018/3P/3C

Order made in
W.P(MD)No.16270 of 2018
Dated: 25.07.2018